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Committee of Tort Claimants*

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

In re:

PG&E CORPORATION

-and-

**PACIFIC GAS AND ELECTRIC
COMPANY,**

Debtors

- ☐ Affects PG& E Corporation
- ☐ Affects Pacific Gas and Electric Company
- ☒ Affects both Debtors

**All papers shall be filed in the Lead Case,
No. 19-30088 (DM)*

Case No. 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)

**EX PARTE APPLICATION FOR ENTRY
OF AN ORDER SUPPLEMENTING THE
RECORD ON THE CORRECTED
MOTION OF DEBTORS PURSUANT TO
11 U.S.C. §§ 105(a), 363, AND 503(c) FOR
ENTRY OF AN ORDER (I) APPROVING
SHORT-TERM INCENTIVE PLAN AND
(II) GRANTING RELATED RELIEF
(Dkt. No. 806)**

Date: April 9, 2019
Time: 9:30 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16 Floor
San Francisco, CA 94102

1 The Official Committee of Tort Claimants (the “TCC”) hereby submits this *ex parte*
2 application (the “**Application**”) to supplement the record on the Debtors’ Corrected Motion
3 Pursuant to 11 U.S.C. §§ 105(a), 363, and 503(c) for Entry of an Order (I) Approving Short-Term
4 Incentive Plan and (II) Granting Related Relief (Dkt. No. 806) (the “**Motion**”) filed by PG&E
5 Corp. and Pacific Gas and Electric Company (collectively, the “**Debtors**,” “**Company**” or
6 “**PG&E**”). In support of this Application, the TCC submits the Declaration of Robert A. Julian
7 (the “**Julian Declaration**”) filed contemporaneously herewith. A proposed form of order
8 granting the relief requested herein is annexed hereto as **Exhibit A** (the “**Proposed Order**”).

9 **MEMORANDUM AND POINTS OF AUTHORITIES**

10 **I. JURISDICTION**

11 The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334.
12 Venue is proper under 28 U.S.C. §§ 1408 and 1409. This Application is a core proceeding under
13 28 U.S.C. § 157(b)(2).

14 **II. BACKGROUND**

15 On March 8, 2016, the Debtors filed the Motion (Dkt. No. 806).

16 On March 12, 2019, the TCC filed an initial objection to the Motion (Dkt. No. 847) and
17 simultaneously therewith, served the Debtors with notices of depositions of their two declarants
18 in support of the Motions: Dinyar Mistry and Douglas Friske.

19 On March 19, 2019, the TCC took the deposition of Mistry and on March 21, 2019, the
20 TCC took the deposition of Friske.

21 On March 28, 2019, the TCC filed its Opposition to the Motion (Dkt. No. 1109) (the
22 “**Opposition**”).¹

23 On April 2, 2019, the United States District Court for the Northern District of California
24 held a hearing (the “**District Court Hearing**”) in *U.S. v. Pacific Gas and Electric Co.*, Case No.
25 3:14-cr-00175 (WHA) (N.D. Cal.). On April 3, 2019, the District Court issued an Order
26 Adopting New Conditions of Probation (Dkt. No. 1040) (the “**District Court Order**”). The
27

28 ¹ Capitalized terms used but not defined in this Application have the meanings given to them in the Motion and the Opposition.

transcript of the District Court Hearing is attached as Exhibit A to the Julian Declaration and the District Court Order is attached as Exhibit B to the Julian Declaration.

On April 4, 2019, the Debtors filed their reply in support of the Motion (Dkt. No. 1226).

III. SUPPLEMENTING THE RECORD IS WARRANTED

By this Application, the TCC seeks to supplement the record on the Motion with the District Court Order and the transcript of the District Court Hearing.

Supplementation is warranted because the new evidence arose after the Opposition was filed and because the new evidence is relevant. For example, in the context of a summary judgment motion, a court may grant a motion to supplement the record with after-acquired evidence. *See, e.g., Elliott v. Acknowledge*, 2012 WL 892182, at *3 n.1 (N.D. Cal. March 14, 2012) (granting a motion to supplement the record with deposition testimony taken after briefing on summary judgment).

The District Court documents are relevant to the Opposition because, among other things, they relate to the appropriateness of the 2019 STIP metrics, payment of bonuses quarterly instead of annually, and the importance of prioritizing wildfire prevention over financial performance or unnecessary payments. For example, in the Opposition, the TCC posits that the 2019 STIP's 40% financial performance and 10% wildfire safety metrics were inappropriate, particularly in light of Judge Alsup's March 5, 2019 observations about the lack of prudence in prioritizing financial performance over wildfire safety, or his proposed wildfire conditions that PG&E stated it could not comply with. *See* Opposition at 15.

The TCC respectfully submits that supplementing the record here does not prejudice the Debtors.

IV. NOTICE

Notice of this Application will be provided to (i) the Debtors, c/o PG&E Corporation and Pacific Gas and Electric Company, PO Box 770000, 77 Beale Street, San Francisco, CA 94105 (Attn: Janet Loduca, Esq.); (ii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Stephen Karotkin, Esq., Jessica Liou, Esq., and Matthew Goren, Esq.), proposed attorneys for the Debtors; (iii) Keller & Benvenuti LLP, 650 California Street, Suite

1 1900, San Francisco, CA 94108 (Attn: Tobias Keller, Esq. and Jane Kim, Esq.), proposed
2 attorneys for the Debtors; (iv) Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York,
3 NY 10038-4982 (Attn: Kristopher M. Hansen, Esq., Erez E. Gilad, Esq., and Matthew G.
4 Garofalo, Esq.) and 2029 Century Park East, Los Angeles, CA 90067-3086 (Attn: Frank A.
5 Merola, Esq.), as counsel for the administrative agent under the Debtors' debtor-in-possession
6 financing facility; (v) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY
7 10017 (Attn: Eli J. Vonnegut, Esq., David Schiff, Esq., and Timothy Graulich, Esq.), as counsel
8 for the collateral agent under the Debtors' debtor-in-possession financing facility; (vi) Paul,
9 Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019-
10 6064 (Attn: Alan W. Kornberg, Esq., Brian S. Hermann, Esq., Walter R. Rieman, Esq., Sean A.
11 Mitchell, Esq., and Neal P. Donnelly, Esq.), as counsel to the California Public Utilities
12 Commission; (vii) the Office of the United States Trustee for Region 17, 450 Golden Gate
13 Avenue, 5th Floor, Suite #05-0153, San Francisco, CA 94102 (Attn: James L. Snyder, Esq. and
14 Timothy Laffredi, Esq.); (viii) U.S. Nuclear Regulatory Commission, Washington, DC 20555-
15 0001 (Attn: General Counsel); (ix) U.S. Department of Justice, 1100 L Street, NW, Room 7106,
16 Washington DC 20005 (Attn: Danielle A. Pham, Esq.) as counsel for United States on behalf of
17 the Federal Energy Regulatory Commission; (x) Milbank LLP, 55 Hudson Yards, New York, NY
18 10001-2163 (Attn: Dennis F. Dunne, Esq. and Sam A. Khalil, Esq.) and 2029 Century Park East,
19 33rd Floor, Los Angeles, CA 90067 (Attn: Paul S. Aronzon, Esq., Gregory A. Bray, Esq., and
20 Thomas R. Kreller, Esq.), as counsel for the Official Committee of Unsecured Creditors; and (xi)
21 those persons who have formally appeared in these Chapter 11 Cases and requested service
22 pursuant to Bankruptcy Rule 2002. The TCC respectfully submits that no further notice is
23 required.

1 **WHEREFORE**, the TCC respectfully requests entry of an order authorizing the
2 supplementing of the record on the Motion to include the transcript of the District Court Hearing
3 and District Court Order, and such other and further relief as the Court may deem just and
4 appropriate.

5 Dated: April 8, 2019

Respectfully submitted,

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7 BAKER & HOSTETLER LLP

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9 By: /s/ Robert A. Julian
 Robert A. Julian

10 *Proposed Attorneys for Official Committee of Tort*
11 *Claimants*